IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.141 OF 2001

Walkesh Gangaram Jhadav)
Convict No.C/11767)
Yerawada Central Prison)
Pune.).. APPELLANT

VERSUS

The State of Maharashtra)
(At the instance of Padgha Police)
Station)).. RESPONDENT

Mr.S.N.Bhonsale, Advocate Appointed for the Appellant Accused.

Mrs.P.H.Kantharia, Additional Public Prosecutor, for the Respondent State.

CORAM: V.G. PALSHIKAR AND SMT.NISHITA MHATRE, JJ.
DATED: 25TH APRIL 2005

ORAL JUDGMENT : (PER MHATRE, J.)

. This Appeal has been preferred against the judgment dated 8th December 2000 passed by the Additional Sessions Judge, Thane in Sessions Case No.405 of 1998. By this judgment, the Appellant has been convicted under Section 302 and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/-, in default sentenced to undergo rigorous imprisonment for six months. The conviction under Section 498A has resulted in a sentence of rigorous imprisonment for two years with find of Rs.1000/-, in default a further sentence of rigorous imprisonment for four months. Both the substantive sentences are to run concurrently.

2. The Complainant, who is PW1, is the father of the deceased Hirabai. The case of the prosecution is based on his complaint that his daughter Hirabai was axed to death by her husband since she refused to provide him money for liquor. This incident occurred in the Complainant's house. His daughter Kavita, PW3, saw the Appellant going towards Hirabai with an axe in his hand. Kavita, therefore, called out to the Complainant, PW1. He rushed to the room where Hirabai was. The Appellant had already dealt a blow on Hirabai's neck with the axe. The Appellant ran away from the scene of the offence. PW1 lodged a complaint with Padgha Police Station. A panchanam was drawn up. The axe was seized from the Complainant's house where the accused had thrown it and has been exhibited as Article No.3. The Appellant was apprehended and was tried by the Sessions Court, Thane for the offence punishable under Sections 302 and 498A of the Indian Penal Code. He has been convicted and sentenced for commission of those offences.

3. The main contention raised by the learned Advocate on behalf of the Appellant is that there was no corroboration between the witnesses. The evidence consisted of several discrepancies and omissions and did not inspire confidence. It was submitted that certain articles and clothes of the deceased did not bear any

blood stains and, therefore, the case of the prosecution could not be relied upon. It was also submitted that PW1, PW3 and PW4 were the father, the sister and the brother, respectively of the deceased and, therefore, were interested witnesses. Such evidence, according to the learned Advocate for the Appellant, should not be relied on.

4. The evidence of PW1 indicates that Hirabai was married to the Appellant six years prior to the incident, was living on the property of PW1 in a separate hut. She lived there along with her husband, the Appellant, and her daughter. PW1 has deposed that the Appellant often demanded money from Hirabai for liquor. When she was unable to provide her money, she was beaten by the Appellant. PW1 has stated that no complaint was lodged with the police since it was a personal affair between his daughter and her husband, the Appellant. He has then stated that during the Holi festival the Appellant had consumed liquor for two days continuously and was in an inebriated condition. At 8.00 a.m. on the second day of Holi, when PW1 was supposed to go out for work, he saw that the Appellant and the deceased Hirabai, who worked as labourers, were still in his house and noticed the Appellant demanding money from Hirabai. PW1 observed that when Hirabai was unable to provide the money, a quarrel ensued between the couple. He has stated thereafter that his daughter

Kavita saw the accused with an axe in his hand and, therefore, called PW1 who was in the frontyard. He rushed into the house and saw that the accused had struck a blow on the Hirabai's neck with the axe. The accused threw the axe down and went away from the scene of the offence. Hirabai collapsed and soon succumbed to the injury. This evidence of PW1 has not been shaken in the cross-examination. PW1 has been consistent in his version of the incident.

5. PW3, who is the sister of the deceased, has deposed that she saw the accused in the house with an axe in his hand. She has stated that she called out to her father and when her father arrived at the spot, both she and her father found that the accused had struck Hirabai on her neck with an axe. The cross-examination with regard to the incident is consistent with what the witness has stated in her examination in chief. She has corroborated the evidence of her father PW1.

6. PW4 is the brother of the deceased. He has witnessed the accused assaulting Hirabai. The testimony of this witness also corroborates the versions of PW1 and PW3. The recovery panchanama drawn up indicates that an axe was recovered from a spot which was close to the pool of blood in which the deceased was found. Blood stained clothes were seized from the spot. The report of the Chemical Analyser shows that the axe had

human blood on it.

7. PW5 and PW6 are the neighbours of PW1 who have stated that they heard PW1 shout. They rushed into his house and found Hirabai lying in a pool of blood. They saw her with an injury on the left side of her neck and an axe lying near her. All these witnesses have identified the axe, Article No.3.

8. The Doctor who conducted the post-mortem has been examined as PW2 and he has stated that the death was due to cardio respiratory failure caused by the haemorrhagic shock which the deceased suffered from on account of the left carotid artery being cut with a sharp object. PW7 is the Investigating Officer.

9. On a reappraisal of the evidence led before the Sessions Judge, we find that the Appellant has committed the offence for which he has been charged. The evidence of PW1, PW3 and PW4 coupled with the discovery of the blood stained axe, in our view, is sufficient to establish the case of the prosecution. Merely because the witnesses are related to the deceased, it would not necessarily mean that their testimony is to be discarded. Although these witnesses may not have been independent witnesses, there is nothing in their depositions which would lead us to believe that their testimony is coloured by the fact that they are related

to the deceased. Each of them has independently narrated the incident which resulted in the death of Hirabai. Each of them has also stated that the Appellant often used to demand money from Hirabai for consuming liquor. They have all stated that whenever Hirabai was unable to provide the money, she was assaulted by the Appellant. The incident which lead to the death of Hirabai had its genesis in Hirabai being unable to meet the Appellant's demands for money. The Appellant was enraged by Hirabai's inability to provide him money for liquor. He struck her with an axe on her neck in his drunken stupor, which resulted in her death.

10. There is sufficient evidence on record to show that the Appellant subjected his wife to harassment and cruelty for being unable to provide him money for liquor. The prosecution has established its case against the Appellant and we see no reason to differ from the conclusions drawn by the Sessions Judge.

11. In the result, Appeal dismissed.

12. The accused was represented before us by an Advocate appointed. The learned Advocate has taken adequate efforts to place the entire case of the accused before us. We, therefore, quantify the fees payable to the learned Advocate appointed for the appellant at Rs.1,000/-.

(V.G. PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)